

# Morris James LLP

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## BY FACSIMILE AND E-FILING

The Honorable Robert B. Kugler  
United States District Judge  
District of New Jersey  
Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets, Room 1050  
Camden, NJ 08101

Re: *Sciele Pharma, Inc., et al. v. Lupin Ltd., et al.*,  
C.A. No. 09-037 (RBK) (JS)

*Shionogi Pharma, Inc., et al. v. Mylan Inc, et al.*,  
C.A. No. 10-135 (RBK) (JS)

Your Honor:

This firm along with McGuireWoods LLP represents Mylan Inc. and Mylan Pharmaceuticals Inc. (collectively, “Mylan”) in the above-referenced, consolidated actions. We write to request that Your Honor place the actions on the Court’s March 2013 trial calendar, if not sooner.

The plaintiffs and Mylan’s co-defendants, Lupin Pharmaceuticals Inc. and Lupin Ltd. (collectively, “Lupin”), today submitted to the Court a stipulation (D.I. 484) requesting that the Court modify the case schedule to extend the remaining deadlines. As requested, the modified schedule would have dispositive motions and Daubert motions due January 31, 2013. A copy of the stipulation is attached to this letter as Exhibit A.

As indicated in Footnote 1 of the stipulation, Mylan did not agree with the other parties that an extension of the duration requested was necessary, but, in the interest of limiting issues to be resolved by the Court, agreed nevertheless not to object to the requested extension. And, to be clear, Mylan is not here objecting. Mylan is cognizant of its obligation under the Hatch-Waxman Act to expedite these actions, however, and it is in the spirit of adhering to this obligation that Mylan writes the Court. *See Eli Lilly & Co. v. Medtronic, Inc.*, 496 U.S. 661, 676 (1990) (acknowledging that one of the key objectives of the Hatch-Waxman Act was to “substantially shorten the time and effort needed to obtain marketing approval” to “enable new drugs to be marketed more cheaply and quickly”).

Notwithstanding the current, requested extension, Mylan believes discovery in these actions reasonably could be completed in time for a 2012 trial. Indeed, one of the schedule modifications proposed (and later abandoned) by Lupin would have allowed for the possibility of

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a 2012 trial. That obviously is not the case with the newly requested schedule modification. Regardless, Mylan believes that, even under the newly requested schedule modification, assuming it is adopted by the Court, the actions could be tried in early 2013. Notably, the action to which Mylan is a party has been pending since February 2010. Lupin's action has been pending more than a full year longer.

The parties have met and conferred on this issue but could not reach agreement. Initially, the other parties were unwilling to request to be placed on the trial calendar at all. Plaintiff Shionogi Pharma Inc. ultimately proposed seeking a June 2013 trial date (and, it appears the other parties were in agreement), but Mylan does not believe there is any reason these cases should haunt the Court's docket for another full year. Therefore, Mylan respectfully requests that, assuming the Court adopts the stipulated schedule modification, Your Honor place these actions on the trial calendar for no later than March 2013.

We would be happy to answer any questions the Court may have. We thank the Court for its consideration of this matter.

Respectfully,

*/s/ Mary B. Matterer*

Mary B. Matterer (Bar I.D. No. 2696)  
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cc: The Honorable Joel Schneider (via facsimile)  
Counsel of record (via email)

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SCIELE PHARMA, INC. <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 09-037 (RBK) (JS)
	)	(CONSOLIDATED)
LUPIN LTD., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
SHIONOGI, INC., <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
v.	)	C.A. No. 10-135 (RBK) (JS)
	)	
MYLAN, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**JOINT STIPULATION REGARDING  
AMENDED SCHEDULING ORDER**

IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court, by and among the undersigned counsel for Plaintiffs Sciele Pharma, Inc., n/k/a Shionogi, Inc., Andrx Corporation, Andrx Pharmaceuticals, Inc. (n/k/a Watson Laboratories, Inc. – Florida), Andrx Pharmaceuticals, L.L.C., Andrx Pharmaceuticals (NJ), Inc., Andrx EU, Ltd., and Andrx Labs, L.L.C., and Defendants Lupin Ltd. and Lupin Pharmaceuticals, Inc., that the deadlines in the Amended Scheduling Order (D.I. 393) shall be revised as follows:<sup>1</sup>

1. Pretrial factual discovery is hereby extended to **August 31, 2012**.<sup>2</sup>

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<sup>1</sup> Although Defendants Mylan Inc. and Mylan Pharmaceuticals Inc. (collectively, “Mylan”) agree that a modification to the schedule is warranted, they do not agree that an extension of the requested duration is necessary. We are authorized to represent that Mylan will not formally oppose the requested extension and agrees to be bound by this stipulation.

<sup>2</sup> Lupin will work together with the other parties in an attempt to meet the proposed deadlines, but Lupin has concerns that an additional extension may be needed.

2. All parties with the affirmative burden of proof on an issue shall serve expert reports and expert disclosures pursuant to FED. R. Civ. P. 26(a)(2) by **October 2, 2012**. Responsive expert reports and expert disclosures pursuant to FED. R. Civ. P. 26(a)(2) shall be served by **November 9, 2012**. Each such report shall be accompanied by the curriculum vitae of the proposed expert witness. No expert opinion testimony shall be admitted at trial with respect to any witness for whom this procedure has not been timely followed. Depositions of proposed expert witnesses shall be concluded by **December 31, 2012**.

3. Dispositive and Daubert motions shall be filed with the Clerk of the Court no later than **January 31, 2013**, in accordance with the applicable Federal and Local Rules.

June 29, 2012

RICHARDS, LAYTON & FINGER P.A.

*/s/ Jason J. Rawnsley*

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IT IS SO ORDERED THIS \_\_\_\_ day of \_\_\_\_\_, 2012.

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The Honorable Joel Schneider  
United States Magistrate Judge